

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

STEFAN PASSANTINO,

Plaintiff,

v.

Case No. 4:23-CV-00300-ELR

UNITED STATES OF AMERICA,

Defendant.

**MOTION FOR CLERK'S ENTRY OF DEFAULT
PURSUANT TO RULE 55**

Plaintiff Stefan Passantino requests that the clerk's office enter default against the Defendant, the United States of America, pursuant to Fed. R. Civ. P. 55(a), for failure to plead or otherwise defend this action. In support of default, Plaintiff provides a declaration of Jesse R. Binnall, which is attached to this Motion.

On December 20, 2023, Plaintiff filed his Complaint. Dkt. No. 1. The government was served with the complaint on February 13, 2024, at the United States Department of Justice, Dkt. No. 17, and on February 14, 2024, on the United States Attorney for the Northern District of Georgia, Dkt. No. 17-1. The government's response was due on April 15, 2024, pursuant to Fed. R. Civ. P. 12(a)(2). On the evening of April 15, 2024, the government moved for an extension of its deadline to respond. Dkt. Nos. 18, 19. On April 16, 2024, this

Court denied that extension of time by minute order. As of the time of this filing, the United States of America has not answered or otherwise responded to the Complaint and thus it is in default. Accordingly, Plaintiff requests that the clerk's office enter a default under Fed. R. Civ. P. 55(a). *See Ramb v. Paramatma*, No. 2:19-CV-21-RWS, 2021 WL 9349985, at *1 (N.D. Ga. Dec. 8, 2021) ("As of the date of this Order, the docket reflects that neither entity has legal representation, and the enlarged time period provided by the Court has expired. For this reason alone, entry of default against these entities pursuant to FED. R. CIV. P. 55(a) is appropriate." (citing *PBS&J Constructors, Inc. v. I.L. Fleming, Inc.*, 2015 WL 7779214, at *2 (N.D. Ga. Dec. 2, 2015))). Upon entry of the default, Plaintiff will proceed to seek a default judgment pursuant to Federal Rule Civil Procedure 55(d). *Id.* at n. 1 ("Rule 55(a) provides for "entering a default" against a party who "has failed to plead or otherwise defend" as opposed to granting or entering default judgment.") (citing FED. R. CIV. P. 55(a) (emphasis in original)). In contrast, pursuant to Federal Rule of Civil Procedure 55(d), "default judgment may be entered against the United States, its officers, or its agencies only if the claimant establishes a claim or right to relief by evidence that satisfies the court." Therefore, Plaintiff will move for a default *judgment* separately following the entry of the default.

Dated: April 25, 2024

STEFAN PASSANTINO
By Counsel

Respectfully submitted,

/s/ Jesse R. Binnall

Jesse R. Binnall (*pro hac vice*)
Shawn M. Flynn (*pro hac vice*)
Jared J. Roberts (*pro hac vice*)
BINNALL LAW GROUP, PLLC
717 King Street, Suite 200
Alexandria, Virginia 22314
Phone: (703) 888-1943
Fax: (703) 888-1930
Email: jesse@binnall.com
shawn@binnall.com
jared@binnall.com

Bryan P. Tyson (Ga. Bar No.
515411)
THE ELECTION LAW GROUP
1600 Parkwood Circle
Suite 200
Atlanta, GA 30339
Phone: 678-336-7249
Email:
btyson@theelectionlawyers.com

Attorneys for Plaintiff

CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(D), the undersigned hereby certifies that the foregoing motion was prepared in Century Schoolbook 13, a font and type selection approved by the Court in L.R. 5.1(B).

/s/ Jesse R. Binnall
Jesse R. Binnall (*pro hac vice*)
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I certify that on April 25, 2024, a copy of the foregoing was filed with the Clerk of the Court using the Court's CM/ECF system, which will send a copy to all counsel of record.

/s/ Jesse R. Binnall
Jesse R. Binnall (*pro hac vice*)
Attorney for Plaintiff